

EXHIBIT D

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

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4 In the Matters of:

5
6 SECURITIES INVESTOR PROTECTION
7 CORPORATION,

8 Plaintiff,

9 v. Adv. Case No. 08-01789-smb

10 BERNARD L. MADOFF INVESTMENT

11 SECURITIES, LLC, ET AL,

12 Defendants.

13 - - - - - x

14 IRVING H. PICARD, TRUSTEE FOR THE

15 LIQUIDATION OF BERNARD L. MADOFF

16 INVESTMENT SECURITIES, LLC, ET AL,

17 Plaintiff,

18 v. Adv. Case No. 10-04898-smb

19 SAREN-LAWRENCE

20 Defendant.

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1 IRVING H. PICARD, TRUSTEE FOR THE
2 LIQUIDATION OF BERNARD L. MADOFF
3 INVESTMENT SECURITIES, LLC, ET AL,
4 Plaintiff,

5 v. Adv. Case No. 10-04946-smb
6 GOLDENBERG,
7 Defendant.

8 - - - - - x

9 IRVING H. PICARD, TRUSTEE FOR THE
10 LIQUIDATION OF BERNARD L. MADOFF
11 INVESTMENT SECURITIES, LLC, ET AL,
12 Plaintiff,

13 v. Adv. Case No. 11-02760-smb
14 ABN AMRO BANK N.V.,
15 Defendants.

16 - - - - - x

17 IRVING H. PICARD, TRUSTEE FOR THE
18 LIQUIDATION OF BERNARD L. MADOFF
19 INVESTMENT SECURITIES, LLC, ET AL,
20 Plaintiff,

21 v. Adv. Case No. 10-04377-smb
22 NELSON, ET AL,
23 Defendants.

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1 IRVING H. PICARD, TRUSTEE FOR THE
2 LIQUIDATION OF BERNARD L. MADOFF
3 INVESTMENT SECURITIES, LLC, ET AL,
4 Plaintiff,

5 v. Adv. Case No. 10-04658-smb
6 NELSON,
7 Defendant.

8 - - - - - x

9 IRVING H. PICARD, TRUSTEE FOR THE
10 LIQUIDATION OF BERNARD L. MADOFF
11 INVESTMENT SECURITIES, LLC, ET AL,
12 Plaintiff,

13 v. Adv. Case No. 10-04728-smb
14 DIGIULIAN,
15 Defendant.

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17
18 U.S. Bankruptcy Court
19 One Bowling Green
20 New York, NY

21
22 May 31, 2017
23 10:40 AM

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1 B E F O R E :

2 HON STUART M. BERNSTEIN

3 U.S. BANKRUPTCY JUDGE

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1 Hearing re: Discovery Conference re Subpoenas to Depose
2 BLMIS Employees

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4 Hearing re: Discovery Conference to Request to Set Single
5 Rebuttal Expert Report Deadline

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7 Hearing re: Discovery Conference re Application of
8 Discovery Arbitrator's Orders

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10 Hearing re: Adversary proceeding: 10-04898-smb Irving H.
11 Picard, Trustee for the Liquidation of B v. Saren-Lawrence.
12 Pre-Trial Conference

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14 Hearing re: Adversary proceeding: 10-04946-smb Irving R.
15 Picard, Trustee for the Liquidation of B v. Goldenberg.
16 Pre-Trial Conference

17
18 Hearing re: Adversary proceeding: 11-02760-smb Irving H.
19 Picard, Trustee for the Liquidation of B v. ABN AMRO BANK
20 N.V. Conference re Status of Memorandum Decision Denying
21 Certification

22
23 Hearing re: Adversary proceeding: 10-04377-smb Irving H.
24 Picard, Trustee for the Liquidation of B v. Nelson, et al.
25 Pre-Trial Conference

1 Hearing re: Adversary proceeding: 10-04658-smb Irving H.
2 Picard, Trustee for the Liquidation of B v. Nelson, et al.
3 Pre-Trial Conference

4
5 Hearing re: Adversary proceeding: 10-04728-smb Irving H.
6 Picard, Trustee for the Liquidation of B v. Digiulian.
7 Cross-Motion to Dismiss

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9 Hearing re: Adversary proceeding: 10-04728-smb
10 Motion for Substitution of Defendant

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25 Transcribed by: Tracey Williams, Nicole Yawn

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23 BY: MICHAEL S. FELDBERG, ESQ.

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1 A P P E A R A N C E S : (Contd.)

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3 MILBERG LLP

4 Attorney for Defendant Goldenberg

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1 THE COURT: -- I'm familiar with the background.

2 MS. CHAITMAN: Okay. So when I was before you on
3 May 17th, 2016 on my motion to compel the trustee to produce
4 documents to us and other issues, Your Honor said to the
5 trustee and I quote -- well, you said in court, "If the
6 trustee has additional documents, he's got to supplement the
7 disclosure or the production, which he does by adding them
8 to the data room." The trustee completely ignored what you
9 said.

10 THE COURT: What does this have to do with your
11 request for a single date for an expert deadline?

12 MS. CHAITMAN: Because the -- every -- the
13 discovery is ongoing, until we get to the truth, which the
14 trustee has deliberately concealed, we are unable to get --

15 THE COURT: Well, let's stop with the
16 recriminations and all that. You want a single discovery
17 deadline or a single deadline for expert reports, right?

18 MS. CHAITMAN: Right, because those expert reports
19 are going to be based upon the discovery that we're now
20 getting. The trustee -- Magistrate Judge Moss ordered the
21 trustee --

22 THE COURT: What is the deadline that you are
23 proposing?

24 MS. CHAITMAN: There are different deadlines --

25 THE COURT: But you're asking for single one. So

1 THE COURT: Well --

2 MR. JACOBS: -- in any event. I would like --

3 THE COURT: -- I'll decide that after trial.

4 MR. JACOBS: Understood. I would like to correct
5 the record. There was never a motion to compel the trustee
6 to produce any documents pending in this Court, that's a
7 fiction.

8 THE COURT: But I thought I directed you to
9 produce the documents.

10 MR. JACOBS: We said that when the Court allowed
11 the deposition of Mr. Madoff for the specific, narrow
12 purpose of examining as a preliminary matter, as a precursor
13 to an omnibus fraud trial, the start date of the fraud and
14 the Court opened the door to that evidence, we undertook a
15 voluntary effort to search for and identify any material
16 that we may have in BLMIS' possession that would evidence
17 trading --

18 THE COURT: Did Ms. Chaitman --

19 MR. JACOBS: -- from that period.

20 THE COURT: -- did Ms. Chaitman ever ask for
21 trading records in any of her discovery requests?

22 MR. JACOBS: She did. She's been asking for
23 trading records for a very long time, for a couple of years
24 now, starting with the subpoena she served on the Depository
25 Trust Clearing Company. That subpoena was limited in time

1 THE COURT: So are you proposing that at the
2 conclusion of the Madoff deposition --

3 MR. JACOBS: Yes.

4 THE COURT: -- we schedule omnibus submissions.
5 You've already submitted your expert report, I don't know if
6 you want to submit another one.

7 MR. JACOBS: Well, we anticipate we will have a
8 supplemental report to address the specific testimony from
9 Mr. Madoff as to the earlier period of the fraud.

10 THE COURT: So the proposal is that at the
11 conclusion of the Madoff deposition on this one issue
12 regarding an expert deadline, we'll reset it at the
13 conclusion of the Madoff deposition.

14 MS. CHAITMAN: Two points, Your Honor. Mr. Jacobs
15 is excluding all of my clients who participated in my motion
16 to compel, which Your Honor ruled on on May 17th, 2016 --

17 MR. JACOBS: There was never any such motion, Your
18 Honor. I apologize for interrupting.

19 THE COURT: We are going to -- this is the way
20 this particular issue will be resolved -- we'll conclude the
21 Madoff Department and then we'll reschedule the expert
22 submissions and have a uniform submission date.

23 MS. CHAITMAN: For all of my clients?

24 THE COURT: For everybody.

25 MR. JACOBS: Well, Your Honor --

1 MR. JACOBS: -- deposition as well.

2 THE COURT: All right. With respect to this
3 issue, what we'll do is -- and you can embody this in an
4 order, so we don't forget --

5 MR. JACOBS: Okay.

6 THE COURT: -- we'll reset the expert deadline
7 after the Madoff deposition is completed as to those cases
8 where expert discovery was not closed as of July 7th, 2016.
9 Okay?

10 MR. JACOBS: Okay.

11 THE COURT: And embody that in the order.

12 MR. JACOBS: Thank you, Your Honor.

13 THE COURT: Next, this issue with the BLMIS
14 employees.

15 MS. CHAITMAN: Your Honor --

16 MR. JACOBS: That's my application, Your Honor, if
17 I may begin? It was our letter seeking permission to move
18 to quash the subpoenas.

19 THE COURT: And what's the basis of the motion to
20 quash?

21 MR. JACOBS: The basis of the motion to quash is
22 twofold. First, to the extent Ms. Chaitman is seeking
23 follow-up discovery to the Madoff inquiry regarding the
24 start date of the fraud, additional discovery can only be
25 served with leave of Court per Your Honor's order that

C E R T I F I C A T I O N

We, Tracey Williams and Nicole Yawn, certify that the foregoing transcript is a true and accurate record of the proceedings.

Tracey Williams

AAERT Certified Electronic Transcriber CET-914

Nicole R. Yawn

Date: June 2, 2017

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